THE OFFICE ACTION

In the Office Action issued on June 15, 2006, the Examiner objected to claims 25 and 26 as containing informalities in formulas. The Examiner rejected claims 14-28 under §112, second paragraph as being indefinite. The Examiner rejected claims 14-16, 19 and 22-30 as being anticipated by U.S. Patent No. 6,501,100 to Srivastava et al. ("Srivastava"). The Examiner further rejected claims 17, 18, 20 and 21 under §103(a) as being unpatentable over Srivastava as applied to claim 14.

REMARKS

Amendments have been made to the claims to address the Examiner's objections and §112 rejections to these. Withdrawal of these rejections is requested.

The Examiner rejected claims 14-16, 19 and 22-30 as being anticipated by Srivastava. Applicants respectfully traverse.

Srivastava is directed to a white light lighting system including an LED, and first and second phosphors having different emission characteristics, that together produce a white light. Applicants are somewhat confused by this rejection, as Srivastava is silent with regard to the recitation of claim 14, i.e. wherein the first phosphor material is disposed closer to the semiconductor light emitter than the second phosphor material, with the first phosphor material having at least one of a shorter decay time and a lower absorption of radiation than the second phosphor material.

In this respect, Srivastava discloses that in a preferred embodiment, the first and second phosphors are blended or interspersed to form a single layer (see col. 6, lines 60-64). Applicants concede that Srivastava does disclose that the phosphors may alternately be in discrete layers (col. 7, lines 4-9). However, Srivastava provides no guidance on the importance of layering the phosphors such that the first layer comprises the phosphor having either a shorter decay time or a lower absorption of radiation from the LED. That is, Srivastava fails to disclose or suggest this feature.

Srivastava does disclose some of the same phosphors used in the present invention such as $A_2P_2O_7$:Eu, Mn. However, there is no indication in Srivastava that this phosphor must be layered closer to the LED than the second phosphor. Rather, Srivastava simply states that the "first and second phosphors 3, 4 may comprise

discrete layers formed over the radiation source", without disclosing or requiring which phosphor should be layered closer to the radiation source.

Thus, the Examiner cannot rely on a theory of inherency either. That is, Inherency must be a necessary result, not merely a possible result. *In re Oelrich*, 212 USPQ 323 (CCPA 1981); *Ex parte Keith*, 154 USPQ 320 (POBA 1961). See also, *In re Robertson*, 49 USPQ2d 1949, 1951 (Fed. Cir. 1999).

In relying on a theory of inherency, the Examiner must provide a basis in fact or technical reasoning to support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the prior art. *Ex parte Levy*, 17 USPQ2d 1461 (BPAI 1990).

Here, Srivastava fails to disclose wherein the presently claimed invention would inherently flow from the teachings therein. For this reason, Applicants request withdrawal of this rejection.

Similarly, the Examiner's rejection of claims 17, 18, 20 and 21 under §103(a) as being unpatentable over Srivastava must also be withdrawn. That is, even assuming the appropriateness of the Examiner's arguments made with regard to these claims, Srivatava fails to disclose or suggest the limitation of claim 1 wherein a first phosphor layer has either a shorter decay time or a lower absorption of radiation from the LED than a second phosphor layer.

For these reasons, Applicants request withdrawal of all rejections.

It is respectfully submitted that the subject application is now in better condition for examination.

Respectfully submitted,

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Sept 12, 2006
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